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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 IBRAHIMA WANE,

12 Plaintiff,

13 v.

14 KORKOR, *et al.*,

15 Defendants.  
16

No. 1:22-cv-00813-JLT-BAM (PC)

ORDER ADOPTING IN PART AND  
DECLINING TO ADOPT IN PART  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION FOR FAILURE TO  
STATE A CLAIM

(Doc. 17)

17 The assigned magistrate judge screened the first amended complaint and issued findings  
18 and recommendations that this action be dismissed for failure to state a cognizable claim upon  
19 which relief may be granted. (Doc. 17.) The Court directed Wane to file objections, if any, within  
20 14 days, but the plaintiff did not. (*Id.*)

21 According to 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo* review of this  
22 case. Having carefully reviewed the entire file, the Court **ADOPTS in part** and **REJECTS in**  
23 **part** the findings and recommendations.

24 Wane's first amended complaint asserts claims for the denial of right to medical care, Due  
25 Process,<sup>1</sup> and freedom from cruel and unusual punishment. (Doc. 15 at 3-4.) His claims arise from

26 <sup>1</sup> Because it is undisputed that Wane is a convicted prisoner, not a pretrial detainee, the Court analyzes his claims  
27 under the Eighth Amendment rather than the Fourteenth Amendment's Due Process Clause. *See Mendiola-Martinez*  
28 *v. Arpaio*, 836 F.3d 1239, 1246 n.5 (9th Cir. 2016); *see also Russell v. Lumitap*, 31 F.4th 729, 738 (9th Cir. 2022)  
("[C]laims brought by pretrial detainees under the Fourteenth Amendment should not necessarily be evaluated under  
the same standard as claims brought by convicted prisoners under the Eighth Amendment.").

1 allegations involving the health care treatment he received at the California Substance Abuse and  
2 Treatment Facility. (*Id.* at 2.) Wane alleges that on June 9, 2017, he was seen by his primary care  
3 physician, Dr. W. Korkor, for the pain, swelling, and lumps discharging fluid out of his breasts.  
4 (*Id.* at 3.) Dr. Korkor diagnosed the problem as stemming from Wane’s medication prescribed by  
5 his mental health provider, Dr. Y. Chain. (*Id.* at 4.) Dr. Korkor told Wane that he needed medical  
6 treatment for his condition and referred him to Dr. Chain. (*Id.* at 3-4.) Dr. Chain discontinued  
7 Wane’s medication (Celexa), but both Dr. Chain and Dr. Korkor said nothing could be done  
8 about his current condition. (*Id.*) Wane alleges that he now has female breasts that leak due to the  
9 Celexa medication. (*Id.* at 4.) Wane asserts claims against Dr. Korkor, Dr. Chain, and Warden  
10 Cisneros. (*Id.* at 2-3.)

11 To the extent Wane brings a claim against Warden Cisneros under a supervisory liability,  
12 the Court agrees with the magistrate judge’s findings that the complaint does not contain  
13 sufficient facts to maintain that claim. Wane alleges that “systemic deficiencies in staffing,  
14 facilities, or procedures which make unnecessary suffering inevitable constitute deliberate  
15 indifference to prisoners’ medical needs,” and “the use of untrained personnel to medical decision  
16 [sic] is a system deficiency in staffing.” (Doc. 15 at 9.) As concluded in the findings and  
17 recommendations, these conclusory statements do no suffice to plead an Eighth Amendment  
18 claim for supervisory liability. (*See* Doc. 17 at 4-5.) Wane has not stated any specific facts to  
19 allege Dr. Chain’s or Dr. Korkor lack the necessary medical training. Accordingly, the Court  
20 **ADOPTS** the magistrate judge’s findings with respect to Warden Cisneros.

21 Regarding Wane’s claims against Dr. Chain and Dr. Korkor, the first amended complaint  
22 arguably sets forth two theories of Eighth Amendment liability for inadequate medical care: (1)  
23 for Dr. Chain’s initial prescribing of the Celexa medication that allegedly caused the injuries and  
24 (2) for the failure by either doctor to treat the injury after the condition arose. (Doc. 17 at 3-4.) To  
25 state a claim under the Eighth Amendment for inadequate medical care, the prisoner must show  
26 that the mistreatment rises to the level of “deliberate indifference to serious medical needs” to  
27 constitute cruel and unusual punishment. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)  
28 (internal quotations omitted). The two-part test for Eighth Amendment inadequate medical care

1 requires the plaintiff to show (1) “a serious medical need by demonstrating that failure to treat a  
2 prisoner’s condition could result in further significant injury or the unnecessary and wonton  
3 infliction of pain” and (2) “the defendant’s response to the need was deliberately indifferent.” *Id.*  
4 (internal quotations omitted). As to the first step, the Court agrees with the findings and  
5 recommendations that Wane’s breast pain and leakage constitute a serious medical need at the  
6 pleading stage. (*See* Doc. 17 at 6-7.)

7       The more difficult question involves the second step of the analysis. To the extent that  
8 Wane claims deliberate indifference by Dr. Chain for having initially prescribed him the Celexa  
9 medication, the Court agrees that this theory does not provide a valid claim for relief. To proceed  
10 on a claim that a medical professional violated the Eighth Amendment for having chosen a  
11 prescription that caused negative side effects, the plaintiff must plead a “culpable mental state”  
12 when prescribing the medication. *See Murillo v. Thornton*, 2008 WL 110899, at \*4 (S.D. Cal. Jan.  
13 9, 2008). In other words, the medical professional must have known that this inmate was at a  
14 particularized risk for the resulting side effect. *See Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th  
15 Cir. 2004); *see also Thomas v. Antipov*, 2015 WL 641446, at \*12 (E.D. Cal. Feb. 12, 2015),  
16 *report and recommendation adopted*, 2015 WL 1345307 (E.D. Cal. Mar. 20, 2015), *modified on*  
17 *reconsideration*, 2015 WL 1801346 (E.D. Cal. Apr. 16, 2015) (“Under *Toguchi*, Ma’s decision to  
18 prescribe Tylenol # 3 cannot constitute deliberate indifference if Ma did not believe that the  
19 medication presented a serious risk of harm to plaintiff.”). Even construing Wane’s allegations to  
20 include a failure to warn him of the potential side effects, courts have consistently held that this  
21 amounts, at most, to medical malpractice or professional negligence but not deliberate  
22 indifference. *See Burgess v. Mar*, 395 F. App’x 368, 368-69 (9th Cir. 2010); *Williams v. CDCR*,  
23 2015 WL 6669816, at \*5 (E.D. Cal. Oct. 29, 2015) (“Failure to advised [sic] Plaintiff of the  
24 negative side-effects of a medication . . . may constitute, at the most medical malpractice—which  
25 is a form of professional negligence.”). Negligence in “diagnosing or treating a medical condition  
26 does not state a valid claim of medical mistreatment under the Eighth Amendment.” *Estelle v.*  
27 *Gamble*, 429 U.S. 97, 106 (1976). Accordingly, the Court **ADOPTS** the magistrate judge’s  
28 findings that Dr. Chain’s initial decision to prescribe Celexa does not state a valid Eighth

1 Amendment claim.

2       However, the Court finds the theory that Dr. Chain and Dr. Korkor were deliberately  
3 indifferent to Wane’s serious medical need by providing no treatment after his breast condition  
4 developed, meets the pleading standard. Prison officials demonstrate deliberate indifference when  
5 they are aware of the patient’s condition but deny, delay or intentionally interfere with medical  
6 treatment. *Estelle*, 429 U.S. at 104. Wane made Dr. Chain and Dr. Korkor aware of the ongoing  
7 pain, swelling, and leaking of his breasts. (Doc. 15 at 3-4.) Both medical professionals informed  
8 him that there was nothing they could do, despite Dr. Korkor’s conclusion that Wane needed  
9 medical treatment. (*Id.*) Their refusal to provide any medical care may constitute deliberate  
10 indifference to a serious medical need. *See Figueroa v. Ryan*, 703 F. App’x 540, 540-41 (9th Cir.  
11 2017) (reversing district court’s dismissal of medical deliberate indifference claim where plaintiff  
12 alleged he told defendants “that he was suffering complications and side effects from his  
13 medications, and that [defendants] refused to help”); *Townsend v. Hemela*, 2021 WL 3737467, at  
14 \*\*4-5 (E.D. Cal. Aug. 24, 2021), *report and recommendation adopted*, 2021 WL 4263062 (E.D.  
15 Cal. Sept. 20, 2021) (denying dismissal where plaintiff made repeated requests and complaints  
16 about the side effects of his medication but the defendant medical professional refused to change  
17 or reduce the dosage of plaintiff’s medication).

18       Arguably, Dr. Chain provided at least some medical care by discontinuing the Celexa  
19 medication. (Doc. 15 at 4.) On the other hand, a liberal construction of Wane’s allegations  
20 suggests a knowing disregard of an ongoing serious medical need because Wane alleges his pain  
21 and symptoms are “recurrent,” even after discontinuing use of Celexa. (Doc. 15 at 6); *see*  
22 *Bradford v. Kvichko*, 2017 WL 6730408, at \*4 (E.D. Cal. Dec. 29, 2017) (finding deliberate  
23 indifference sufficiently pled where defendant failed to provide medical care despite knowing of  
24 plaintiff’s sever chest pain and blurred vision, a side effect of his medication). After discovery,  
25 the evidence may reveal that Dr. Chain’s and Dr. Korkor’s decision not to treat the swollen and  
26 painful lumps in Wane’s breasts was a medically acceptable course of treatment under the  
27 circumstances. *See Toguchi*, 391 F.3d at 1058. However, at the pleading stage, the allegations that  
28 both doctors chose simply not to provide any medical treatment for Wane’s ongoing painful

1 condition satisfies the pleading standard that they failed “to respond to a prisoner’s pain or  
2 possible medical need” and that indifference caused harm. *See Wilhelm v. Rotman*, 680 F.3d  
3 1113, 1122 (9th Cir. 2012) (quoting *Jett*, 439 F.3d at 1096). Thus, the Court **DECLINES to**  
4 **adopt** the recommendation to dismiss the claims against Dr. Chain and Dr. Korkor on this basis.  
5 Accordingly, the Court **ORDERS**:

- 6 1. The findings and recommendations issued on December 28, 2022, (Doc. 17), are  
7 **ADOPTED in part** and **REJECTED in part**.
- 8 2. Wane’s claims against Warden Cisneros are **DISMISSED**, with prejudice, for failure  
9 to state a cognizable claim upon which relief may be granted.
- 10 3. Wane’s claims against Dr. Chain based upon his initial prescribing of the Celexa  
11 medication are **DISMISSED**, with prejudice, for failure to state a cognizable claim  
12 upon which relief may be granted.
- 13 4. This case **SHALL** proceed only on Wane’s Eighth Amendment claims for failure to  
14 treat his side effects caused by the Celexa medication.
- 15 5. This action is referred to the magistrate judge for further proceedings.

16  
17 IT IS SO ORDERED.

18 Dated: **March 14, 2023**

  
UNITED STATES DISTRICT JUDGE